

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Karen Thomas, Case Manager
 Joel Lawson, Associate Director Development Review
DATE: April 30, 2013
SUBJECT: BZA Case 18532: 2919 39th Street NW

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the application for special exception relief to permit an accessory apartment at 2919 39th Street, NW, having satisfied the provisions under § 202.10, subject to the Board's waiver of:

- the detached dwelling requirement (limited to one-family detached; one-family semi-detached existing);
- the gross floor area requirement (25% required; 30% provided); and
- The Zoning Administrator's grant of minor flexibility (per § 407) from the minimum lot area requirement, under § 202.10 (a) (4,000 sf required; 3,885 sf existing).

II. LOCATION AND SITE DESCRIPTION

Address	2919 39 th St NW
Legal Description	Square 1814, Lot 0076
Ward	3/ANC-3C
Lot Characteristics	Flat rectangular lot in the Cathedral Heights neighborhood.
Zoning	R2 – detached and semi detached single family dwellings.
Existing Development	Semi-detached dwelling, permitted in this zone.
Adjacent Properties	Lots with semi-detached homes to the north and south of the subject property, with large condominium building to the west across 39 th street.
Surrounding Neighborhood Character	The square is bounded by Cathedral Avenue to the north, Bellevue terrace to the east, Garfield Street to the south and 39 th Street to the west. Within a two-block radius, there is a mix of semi-detached, detached, and large apartment buildings within the R-5- district.

III. APPLICATION IN BRIEF

The Applicant, Michelle Hassine, proposes to establish an accessory apartment of 927 square feet (i.e. 30% of the gross floor area of the house) in the basement of the existing single-family semi-detached dwelling. The applicant will continue to reside in the dwelling using the entire two and a half-story as the principal dwelling. The one-bedroom accessory unit would be accessed through an existing door at the rear of the dwelling. No external changes to the residence are planned.

IV. BACKGROUND

The applicant applied for a certificate of occupancy to permit an accessory apartment in the basement of her residence and was informed by the Zoning Administrator (ZA) that special exception relief was required in this zone. The ZA's referral dated January 3, 2013 is submitted as part of the subject application.

OP's preliminary review determined that this application would be deemed a request for a use variance based on the Board's determination under BZA 18232 and the requirement of 202.10 (i) (3), where there is a request to modify more than two requirements of the subsection, the application shall be deemed a request for a use variance. The three requirements which do not satisfy the test for a special exception, includes:

- 1) The one-family detached residence requirement (§202.10): the existing residence is a semi-detached structure;
- 2) The minimum lot area requirement (§202.10 (a): 4,000 sf required – 3,885 sf existing; and
- 3) The gross floor area of the accessory apt. would be 30% of the gross floor area of the house – 25% maximum permitted (§ 202.10 (c)).

OP discussed with the Office of the Attorney General (OAG) whether the Zoning Administrator may consider his authority under §407 to permit a deviation to the lot area. If such flexibility would be granted then, the subject application could be reviewed for special exception relief, where under 202.10 (i), the Board may modify or **waive not more than two of the requirements of the subsection** (emphasis added). The OAG agreed that this would be permitted subject to the ZA's determination.

In conversation with the ZA, the ZA informed OP that minor flexibility could be granted from the lot area requirement of Section 202.10 (a) (3), and the decision forwarded to OP via email is attached.

Subject to the ZA's agreement, OP reviewed the application as a special exception request to permit the accessory apartment in the R-2 District, with a request to the Board to waive two requirements, including the detached dwelling and maximum gross floor area requirements of § 202.10 and 202.10 (c), respectively.

V. ZONING REQUIREMENTS and REQUESTED RELIEF

R-2 Zone	Regulation	Existing	Proposed	Relief
Single-family residence	One-family detached	One-family semi-detached	One-family semi-detached	Waiver requested
Lot Area § 202.10 (a)	4,000 sf min.	3,885 sf	3,885sf.	ZA - Minor Flexibility <i>(Granted per § 407.1)</i>
Gross Floor Area § 202.10 (c)	25% max. 768 sf	30% 927 sf	30% 927 sf	Waiver requested
Lot Occupancy § 403	40 % max.	Not provided	No addition proposed	None required

Special Exception Relief pursuant to § 202.10

Compliance with § 202.10

*An accessory apartment may be added within an existing **one-family detached dwelling** if approved by the Board of Zoning Adjustment as a special exception under § 3104, subject to the following provisions:*

(a) *The lot shall have a minimum lot area for the following zone Districts: ...*

(3) *Four thousand square feet (4,000 ft.²) for R-2 and R-3;*

The lot size of 3,885 square feet is less than the required minimum. However, the Zoning Administrator has granted minor flexibility from this requirement as authorized under 11 DCMR 407.1 as stated prior. The decision is attached to this report

(b) *The house shall have at least two thousand square feet (2,000 ft.²) of gross floor area, exclusive of garage space;*

According the DC land records, the gross dwelling floor area is 3,072 square feet which exceeds the required minimum.

(c) *The accessory apartment unit may not occupy more than twenty-five percent (25%) of the gross floor area of the house;*

The proposed 927 square-foot apartment would occupy approximately 30% of the dwelling gross floor area. The applicant is requesting a waiver from this requirement by the Board. While the size of the living area for the rental unit would meet the 25% requirement, the common utility area of the entire residence and the stair case to the basement (which would not be used) has to be included in the calculation of the gross floor area, which increases the gross floor area requirement herein. Grant of a waiver from this requirement would not conflict with the intent of § 202 to maintain the single-family residential character of the property or neighborhood.

(d) *The new apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area; garage space may not be converted;*

According to the submitted plans the new apartment would be created entirely through internal renovations.

(e) *If an additional entrance to the house is created, it shall not be located on a wall of the house that faces a street;*

No additional entrance to the dwelling is proposed. The existing entrance is at the rear of the home.

(f) *Either the principal dwelling or accessory apartment unit must be owner-occupied;*

The application stated that the property owner would continue to occupy this dwelling.

(g) *The aggregate number of persons that may occupy the house, including the principal dwelling and the accessory apartment combined, shall not exceed six (6);*

The application indicated that the applicant understands this limitation, and that no more than two persons would reside in the apartment.

(h) *An accessory apartment may not be added where a home occupation is already located on the premises; and*

The application indicates that there is no other home occupation onsite.

- (i) *The Board may modify or waive not more than two (2) of the requirements specified in paragraphs (a) through (h) of this subsection; provided, that the following occurs: ...*

The applicant requested two waivers including from the detached dwelling requirement and the gross floor area requirement discussed prior. The Board's grant of a waiver from the first requirement of the subsection would allow the applicant "to establish an accessory unit which would for the most part satisfy all other provisions and which would not change the principal use of the property as a one-family residence. It would not permit the conversion to a flat, which is a different principal use from a one-family residential," (Order 18232, page 5), which would not be first permitted in the R-2 district.

i. Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?

The proposal is in harmony with the general purpose and intent of the regulation and map, as the requested waivers from the Board represent minimal areas which would not change the principal use as a single-family residential structure as permitted in the R-2 district.

ii. Would the proposal appear to tend to affect adversely, the use of neighboring property?

The proposal would not adversely impact the use of neighboring property. The accessory apartment would not alter the character of the neighborhood. No exterior alteration to the existing home is contemplated that would impact the light, air or privacy of the immediate neighbors. Based on this review, the application meets the standards for special exception approval.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

No other agency has provided comments to OP.

VII. COMMUNITY COMMENTS

The ANC is expected to submit its report prior to the hearing.

Attachment:

1. Location Map
2. Zoning Administrator's ruling 4/22/2013

Attachment 1

LOCATION AND ZONING MAP



Attachment 2

From: LeGrant, Matt (DCRA)
Sent: Monday, April 22, 2013 5:28 PM
To: Michelle Hassine
Cc: Thomas, Karen (OP); Silveira, Victor (ANC 3C07)
Subject: RE: BZA 18532 - Request for ZA Flexibility

Michelle B. Hassine-

After reviewing your email seeking minor flexibility under 11 DCMR 407.1 from the lot area requirement of Section 202.10 (a) (3), I have determined that the flexibility can be granted. The reduction from the standard is justified and, based on the information you provided I agree with the rationale. In addition, I do not see any conflict with the purposes of the District, nor any adverse impacts occurring to adjacent properties due to the distance from the buildings on the adjacent properties.

Accordingly, you can proceed with an application and cite this communication that documents my granting of the minor flexibility.

Best Regards,

Matthew Le Grant

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